49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6355/2007 and CM 11934-935/2007

August 29, 2007

DEEPALI YADAV & ANR. ..... Petitioners
Through Mr. Ravi Gupta, Mr. Gagan Gupta, Advocates

versus

UOI & ANR. ..... Respondents
Through Mr. Rakesh Gosain, Advocate for R-2.

CORAM:
Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. Issue notice. Mr. Rakesh Gosain, learned counsel accepts notice on behalf of respondent No.2 and states that the petition can be disposed off finally.

2. The petitioners in this case completed their MBBS course from medical institutions in Maharashtra. Apparently, examinations in Universities in Maharashtra were conducted in June 2006. Consequently, there was some delay in the declaration of results and also in issuance of certificates. The petitioners claim that certificates were issued on 30th August, 2006. The internship commenced in most cases during first and second week of September 2006. The grievance here is that the National Board of

Examinations, of the Diplomate of National Board (DNB) has fixed a schedule for the Common Entrance Test (CET) for admission to the three years DNB programme scheduled to begin in January 2008. The test is to commence on 9th December, 2007.

3. The petitioners contended that the condition imposed in this case i.e. that candidates should have completed one year internship as on 31st August, 2007 has acted oppressively and would exclude their candidature. That condition reads as follows:

> *"4.1 Eligibility*
>
> ***a.*** *Indian Degrees; Candidates who possess medical degrees from Indian Universities recognized as per provisions of India Medical Council Act 1956 and possess provisional or permanent registration certificate issued by Medical Council of India/State Medical Council and have completed one year of internship on or before the last date of submission of the application form i.e. 31st August, 2007."*

4. Learned counsel for the petitioner pointed in addition to Rule 2.2 (contained in the Bulletin under the heading "Information for candidates"). That stipulation reads as follows:

> *"2.2 A candidate holding medical qualification registered as per provisions of the Indian Medical Council Act 1956 as amended from time to time and such other qualification as may be registered by the Medical Council of India/State Medical Council from time to time, is eligible to take the Board's CET."*

5. Counsel contended that Universities in Maharashtra generally conduct their examination in June and declare the results thereafter. In such circumstances, the stipulation of the candidate having to complete internship on or before 31st August, 2007 would exclude the petitioners and all such students from Maharashtra. It was submitted

that such students would stand to loose about a year and would be eligible only in 2008. Learned counsel contended that a fair reading of clause 4.1(a) shows that what is stipulated is that the candidate should possess a provisional registration certificate issued by the Medical Council. This intent is also apparent from clause 2.2 which further reinforces the submission that the candidate should hold a medical qualification in terms of Indian Medical Council Act, 1956 as amended. In these circumstances, the NBE ought not to have fixed cut off date as 31st August, 2007 but in stead it should be directed to allow the petitioners to appear in the CET provided they complete the internship on or before the date i.e. 9th December, 2007.

6. The petition was opposed by counsel for the respondent No.2 who relied on Sections 25 & 33 and the concerned regulations. According to him, the qualification would be said to be acquired only if the candidate completed his internship. It was submitted that having regard to the examinations and results of all the Universities in India (where, by and large, the examinations are held in April and results are declared by June), the cut off date 31st August waS put in place. Learned counsel contended that for 2006 there was dislocation of this practice because of a litigation in the Supreme Court. However, that situation does not subsist today. Counsel also relied upon the judgment of the Supreme Court reported as *Ajay Kumar Agrawal and Ors. vs. State of U.P. and Ors.*, (1991) 1 SCC 636 and submitted that only candidates who complete the one year internship is deemed to be fully qualified to hold an MBBS degree.

7. The above discussion would show that the present dispute is of a restricted nature; it is with regard to the validity of a cut off date prescribed by the NBE. According to the

terms contained in the Bulletin, the eligibility of candidates wishing to appear in the CET scheduled on 9th December, 2007 is that they should have completed their internship by 31st August, 2007.

8. The argument of the petitioner that the stipulation regarding completion of internship on or before 31st August, 2007 should be construed liberally, so long as the concerned candidate completes his internship before the date of the examination, appears attractive at the first blush. However, a deeper scrutiny would reveal that it has a singular flaw, in that a person who enrolled for internship later and not in September, say in October or November, would still be deemed eligible if he completes the internship just before the date of the examination. Such shifting basis cannot be the foundation of an examination norm, prescribing eligibility. It is well settled that whenever an administrative agency or the legislature fixes a cut off date, as long as the stipulation is not arbitrary but has some co-relation with the objective sought to be achieved, the Court would not interfere. Personal convenience cannot outweigh public interest. No doubt, the petitioners in this case would face some hardship yet the Court cannot ignore the statutory provisions which unequivocally prescribe a person is deemed to have qualified the MBBS degree only on completion of internship in accordance with the regulations framed under Section 33 of the Indian Medical Council Act.

9. In *Ajay Kumar Agrawal's* case (supra) the Supreme Court held as follows:

> *" 12. Section 33 of the Indian Medical Council Act contemplates regulations and a sub-section thereof authorises regulations to be made for the courses and the period of study and practical training to be undertaken for grant of recognised medical qualifications. Section 25 of the Act provides that provisional registration and internship for a period of one*

year is a basic qualifications necessary for acquiring the full-fledged MBBS degree. We also find that a regular registration is necessary for a candidate to get admitted into the Post Graduate Course and regular registration would not be permitted until the internship is completed. The action of the State of Uttar Pradesh in fixing the cut-ff date as the end of December 1990, and allowing the candidates undergoing internship to take the selection examination as also get admitted into the Post Graduate Courses is, therefore, contrary to the scheme of the Act and the regulations made thereunder. The prevalent arrangement in the State of Uttar Pradesh can only be classified as another indisciplined action."

10. In view of the above submissions, I am not persuaded by the submissions of the petitioners that the cut off date stipulated in this case is in any manner arbitrary or that a direction be issued to the respondents to consider their candidatures as long as they complete internship before the date of examination i.e. 9th December, 2007. In view of these findings, the petition has to fail. The writ petition and applications for interim relief are accordingly dismissed.

S. RAVINDRA BHAT,J

AUGUST 29, 2007
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